Supreme Court of the United States

October Term, 196~~0~~1

No. ~~[illegible]~~ 46

MAURICE A. HUTCHESON,
Petitioner.

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the District of Columbia Circuit

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Maurice A. Hutcheson, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, filed on December 7, 1960, affirming the judgment of the United States District Court for the District of Columbia filed May 18, 1960, after a trial before Judge James W. Morris, without a jury, on April 5-11, 1960 (186).*

The judgment of the District Court adjudged the defendant guilty of violations of Act of June 22, 1938, c. 594, 52 Stat. 942, U. S. C. A., Title 2, §192.

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* The numerals are, unless otherwise indicated, page numbers in the Joint Appendix constituting the record as printed for the use of the court below.

The indictment charged the petitioner with unlawfully refusing on June 27, 1958, to answer eighteen questions propounded to him by the Senate Select Committee on Improper Activities in the Labor or Management Field. Each such question constituted a separate count (2A).

The petitioner was sentenced to imprisonment for six months and to a fine of $500.

Opinion Below

The Court of Appeals affirmed without opinion.

In the District Court Judge Morris, in rendering decision, made the oral statement of opinion contained on page 172 of the Joint Appendix and reproduced on page 8, *post*.

Jurisdiction

The jurisdiction of this Court rests on 28 U. S. C. Section 1254 (1).

The judgment of the Court of Appeals was filed on December 7, 1960.

A timely petition for rehearing was denied, without opinion, on January 9, 1961.

Questions Presented for Review

(1) Whether, in requiring the petitioner, then under Indiana indictment for felony, to answer the questions specified in the indictment tried in the District Court, the Select Committee

(a) acted without lawful power or jurisdiction;

(b) deprived the petitioner of due processes of law;

(c) deprived the petitioner of his constitutional and common law right to the assistance and protection of counsel in the matter of the Indiana indictment, or impaired such right;

(d) deprived the petitioner of his constitutional right to be tried by the Indiana court and not pre-tried by the Committee in whole or in part;

(e) assumed powers which could be lawfully exercised only by executive and judicial branches of government;

(f) by its procedures, public statements, press release, implications and pronouncements of guilt, and instigation of Indiana prosecuting officials, intervened in a pending criminal prosecution of the petitioner, publicly pilloried him and impaired his constitutional and common law rights in and to a fair, impartial, unprejudiced and unprejudged trial of the Indiana indictment.

(2) Whether the petitioner was guilty of wilful contempt for refusing to answer questions which his Indiana defense counsel, who also acted as his counsel before the Committee, advised could, under Indiana law, aid the Indiana prosecution; and particularly so where the Committee itself had assured exclusion from the inquiry of matters to which, as his counsel advised, the questions actually related, and also particularly so where his counsel's advice was right.

(3) Whether it was rightly held below that the petitioner's only recourse was the Self-Incrimination Clause of the Fifth Amendment.

(4) Whether the Government proved criminal intent beyond a reasonable doubt.

Statute and Constitutional Provisions Involved

Title 2 USCA Sec. 192 (52 Stat. 942) provides:

> "192. *Refusal of witness to testify or produce papers*
>
> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

The Fifth and Sixth Amendments are printed in the Appendix, p. 37, *post*. The separation of the three branches of government is inherent in the American constitutional system, federal and state.

Statement of the Case

The petitioner is the General President of the United Brotherhood of Carpenters and Joiners of America with headquarters in Indianapolis, Indiana.

On February 18, 1958, he and Frank M. Chapman and O. William Blaier were individually indicted by the grand jury of Marion County, Indiana. (Committee and Government Exhibit 47 [76, 85, 179]).

The indictment was in two counts which respectively charged the defendants with conspiracy to promise to bribe and with bribing one Harry Doggett, Assistant Director,

Right of Way Department of the State Highway Department of Indiana, with one-fifth of all profits by the defendants from all grants of rights of way by the defendants or any of them to the State of Indiana across real estate owned by the defendants, or any of them, in Indiana (179-186). No terminal date for the conspiracy charged was alleged.

The offenses charged were felonies and wholly personal. Neither the Brotherhood nor its property or funds were charged to be involved.

Thereafter, on June 26, 27, 1958, this petitioner, pursuant to subpoena, appeared before the Select Committee (Senator John L. McClellan, Chairman). He was accompanied by counsel, Mr. Howard Travis, a member of the Indiana bar, who was also counsel for him and his co-defendant Blaier in the matter of the Indiana indictment (8, 82, 88, 74, 131-2).

The Committee opened its interrogation on June 26 into what its counsel comprehensively termed the Indiana "highway scandal" and "the road situation out in Indiana" (69, 76, 51) by announcing and reading into its record a "statement in background of this situation to clarify it" "so that there will be no doubt as to the subject matter being inquired into" (18).

That "statement" is reproduced in full on pages 13-15, *post*. It included as "involved in this situation" the aforesaid bribery indictment against the petitioner and others; the charges therein; the land "deal" achieved thereby; "the $78,000 profit made on the deal"; and the subsequent "restitution" of this "profit" as part of a conspiracy to prevent indictment for "the deal" (18, 19). The indictment was incorporated by the Committee in its record as Exhibit 47 (78, 179).

On June 27, 1958, questions on various subjects, including the aforesaid Indiana highway matter, were put to the petitioner by the Committee and its counsel, Robert F. Kennedy (86 *et seq.*).

The petitioner answered all questions except those as to which Mr. Travis advised that they ran to matters which related or might be claimed to relate to the aforesaid pending indictment in Indiana or to aid the prosecution thereof, and were in denial of due processes of law and specified guarantees under the Fifth and Sixth Amendments (88-91). The petitioner followed this advice, and respectfully declined answers to such questions (122, 123, 130). At the same time the petitioner expressly disclaimed exercising the privilege against self-incrimination contained in the Fifth Amendment to the Constitution of the United States (126, 133).

The petitioner thus declined to answer the eighteen questions which are the subject of the counts in the indictment, to wit (2A):

> 1. Has he [Mr. Raddock] received from the union payment for acts performed in your behalf and for you as an individual?
>
> 2. Have you, unrelated to this offense charged in the indictment now against you, engaged the services of Mr. Raddock, and have you paid him out of union funds for the performance of those services, to aid and assist you in avoiding or preventing an indictment from being found against you or for being criminally prosecuted for any other offense other than that mentioned in this indictment?
>
> 3. Did you engage the services of Mr. Raddock and pay him for those services out of union funds, to contacts, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind.?
>
> 4. Have you paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years?

5. Have you used union funds to pay Max C. Raddock for any services rendered to you personally, wholly disassociated from any matters out of which the pending criminal charge arose?

6. Was he there [in Chicago] on union business for which the union had the responsibility for payment?

7. Was Mr. Raddock paid on that trip, the expenses of his paid by union funds while he was on union business?

8. You were out in Chicago at the same time?

9. Were your expenses on that Chicago trip paid by the union?

10. Were you out in Chicago at that time on union business?

11. Do you know Mr. James Hoffa?

12. Did you make an arrangement with Mr. Hoffa that he was to perform tasks for you in return for your support on the question of his being ousted from the A. F. of L.-CIO?

13. Isn't it a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957?

14. And wasn't that telephone call in fact paid out of union funds, the telephone call that you made to him on August 12?

15. Do you also know Mr. Sawochka of the Brotherhood of Teamsters?

16. Isn't it a fact that you had Mr. Plymate who is a representative of the brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957?

17. And isn't it a fact that that telephone bill and that telephone call was paid out of union funds?

18. Did you have any business with local 142 of the Teamsters in Gary, Ind.?

At the conclusion of its interrogation of the petitioner the Committee placed in its record and issued to the public and the press "a closing statement" (150-2) declaring that the petitioner with others "were involved in a conspiracy to subvert justice in the State of Indiana;" that "further exposure we believe can and should be made"; and that "we will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter."

The trial in the District Court consisted of readings by the prosecution from the transcript of proceedings before the Committee in June, 1958, and of testimony by Senator McClellan and Paul J. Tierney, assistant counsel to the Committee, called as Government witnesses.

Senator McClellan testified in the course of prosecution questioning: "Our legislative purpose is to search out and find if crime has been committed" (163).

At the close of the trial Judge Morris rendered the following oral decision (172):

> "The Court: And I say it (the Committee) did have the right to ask the questions and the man is in contempt of court in not answering them. That is my answer. Any other answer in this jurisdiction has got to come from the Court of Appeals.
>
> The *Sacher* case, Mr. Hitz doesn't seem to think it is in point with the facts in this case. I disagree with him. I think it is absolutely dispositive of what is involved in this case and I think it makes it abundantly clear that the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth

Amendment. He did not seek it and it is the only way he could properly seek it, before a Committee of Congress.

That is my ruling and that is what I hold.

You can prepare a decree accordingly."

Reasons for Granting the Writ

(1) So far as we can find, this case presents the first instance where a Congressional Committee, claiming powers of investigation, has confronted a witness with a statement of "background", "information" and specifications of "the subject matter being inquired into" which expressly set forth the fact and circumstances of a felony indictment then pending against him in a state court, and facts and circumstances antecedent to such indictment and capable of aiding (as rightly so advised by his counsel) both substantively and adjectively the prosecution and trial of such indictment (18-20).

(2) Also, so far as we can find, this case presents the first instance where a court has held that a witness so under indictment and so confronted and interrogated by the Congressional Committee can properly seek relief "only" by claiming the Self-Incrimination Clause (172).

(3) Also, so far as we can find, this case presents the first instance where, notwithstanding that resort before the Congressional Committee to the Self-Incrimination Clause could be utilized adversely to the witness on the trial of his state indictment, a federal court has nevertheless held that such resort was his "*only*" means of relief before the Congressional Committee (172).

(4) Also, so far as we can find, this case presents the first instance where, notwithstanding that a plea of self-

incrimination as to a state offense is not available in law as against federal interrogation, a federal court has nevertheless held that such a plea was in law "the only way he (the witness) could properly seek it (relief) before a Committee of Congress" inquiring into circumstances constituting an avowed state offense and capable of aiding the prosecution of the pending state indictment against the witness (172).

(5) Also, so far as we can find, this case presents the first instance where the inquiring Congressional Committee has, both before and during such interrogation of the witness under such indictment, has intervened in his pending prosecution, has publicly pilloried him with implications and averments of guilt in anticipation of his trial on the pending indictment, and has closed his interrogation with an immediate nation-wide press release calling for his "further exposure" and offering to "help law enforcement officials in the state" where such indictment was pending (150-1).

Hence, we respectfully submit that the present case plainly satisfies the criteria for certiorari established by the Court's Rule 19.

AMPLIFYING ARGUMENT

POINT I

The refusals by the petitioner, then under pending Indiana indictment charging felonies, did not constitute criminal contempt.

(1) The Government's brief below advanced as a basic assertion (p. 21) that the fact that

> "appellant was under indictment was not sufficient to negate the existence of a legislative purpose."

But what this case involves are the rights of the indicted person when under legislative interrogation.

In *Watkins* v. *United States*, 354 U. S. 178, this Court said (p. 188):

> "The Bill of Rights is applicable to investigations as to all forms of governmental action."

In *Barenblatt* v. *United States*, 360 U. S. 109, this Court said (p. 112):

> "And the Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights."

See also *Wolf* v. *Colorado*, 338 U. S. 25, 27; *Rochin* v. *California*, 342 U. S. 165, 169; *Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, 173-4.

(2) On February 18, 1958,—over four months before the petitioner's interrogation by the McClellan Committee on June 27, 1958,—he and two other persons (Frank M. Chapman and O. William Blaier) were indicted in the State of Indiana, County of Marion, on two felony counts.

The Committee marked this indictment as Exhibit 47 (76, 85, 179-186). At the trial it became "Government's Exhibit No. 47" (85, 179-186).

The first count of this indictment was for a continuing "conspiracy." It charged that in Marion County, Indiana, and on or about May 1, 1956, the three defendants had conspired with the purpose of bribing Harry Doggett, Assistant Director, Right of Way Department of the State Highway Department of Indiana, by promise of "one-fifth (1/5) of all profits thereafter received" by them or any of them from "any and all grants or conveyances of rights of way by the defendants, or any of said defendants, to the State of Indiana across real estate owned by the defendants, or any of them, in the State of Indiana;" that "thereafter, pursuant to and in furtherance of the aforesaid conspiracy," Doggett exercised official action for the acquisition of rights of way across lands owned by the defendant Chapman in Lake County and by the defendant Blaier in Wayne County, Indiana; and that Doggett was paid as his one-fifth sums totalling $15,800.

This alleged "conspiracy" was described as a continuing one. The count did not allege a time limit or that it had terminated.

The second count of the indictment charged the substantive offense of paying to Doggett $10,000 on or about December 17, 1956, as such a bribe.

The acts thus charged were wholly personal and related to lands owned individually. The United Brotherhood of Carpenters was not mentioned.

Each count of the indictment charged a felony under the law of Indiana, punishable with imprisonment for not less than two years nor more than fourteen years, plus a fine. (Burns, Indiana Criminal Code, §§10-601, 10-1101.)

(3) Concerning what thus came to be spoken of by the Committee as "the highway scandal" (69, 76, 51), the Committee opened its public inquiry on June 26, 1958, with five witnesses, including Blaier, a co-defendant in the Indiana indictment; and continued it on June 27 with Mr. Hutcheson, this petitioner (13, 86, 88).

Throughout these interrogations on June 26, the petitioner and Mr. Howard Travis, a member of the Indiana bar and counsel for the petitioner and Blaier both before the Committee and for the trial of the Indiana indictment, were continuously present (8, 74, 75, 88-9).

In opening on June 26 the Committee's chairman and counsel publicly made the following formal statement of "background information" "so that there will be no doubt as to the subject matter being inquired into" with the ensuing witnesses (18-20):

> "Mr. Kennedy: Mr. Chairman, could I read a short statement in background of this situation to clarify it?
>
> The Chairman: So that there will be no doubt as to the subject matter being inquired into, and so that the witness may be so apprised, you may read some background information, not as testimony, but upon which to predicate further testimony.
>
> Mr. Kennedy: In May and June of 1957, hearings were held before the Gore committee, concerning the purchase of land along a proposed right-of-way in Lake County, Ind., by certain individuals, including Frank Chapman, who was the general treasurer of the Carpenters International.
>
> The Chairman: Is that a right-of-way for a highway for a public highway?
>
> Mr. Kennedy: That is correct. And the purchase that was being looked into was the purchase that was made in June of 1956.
>
> Involved in this situation, along with Chapman, were Maurice A. Hutcheson, general president of the

Carpenters, and O. William Blaier, second general vice president. Within several months after the purchase of the land, it was sold to the State for the highway at a $78,000 profit on a $20,000 investment.

Part of the proceeds of the profits were allegedly paid by Chapman to the Indiana Highway Commission, and a deputy in the right-of-way office of the Indiana Highway Department.

Hutcheson, Blaier and Chapman invoked the fifth amendment before the Gore committee on this matter. This whole situation was presented to the Lake County grand jury by Metro Holovachka, the county prosecutor, commencing July 22, 1957.

The grand jury recessed on July 23, and thereafter considered the matter for an additional day on August 19, 1957.

Hutcheson, Blaier and Chapman did not appear before the grand jury because Holovachka did not subpoena them, or could not. On August 20, 1957, Holovachka announced that no indictments of the Carpenters' officials as well as others involved would be forthcoming because 'A lack of jurisdiction.' Moreover, through an attorney whom Holovachka refused to identify, the Carpenters' officials made restitution to the State of the $78,000 profit made on the deal.

Subsequently, Mr. Chapman, these three individuals as well as certain of the State officials, were indicted in an adjoining county, Marion County, in the State of Indiana on this deal.

We are inquiring into the situation in connection with the presentation before the grand jury in Lake County, Ind.; the intervention by certain union officials into that matter, and the part that was played by Mr. Hutcheson himself, Mr. Sawochka, the secretary-treasurer of local 142 of the Teamsters, and Mr. James Hoffa, the international president of the Teamsters.

The Chairman: Is there some information that either union funds were used in the course of these transactions or that the influence of official positions of high union officials was used in connection with this alleged illegal operation?

Mr. Kennedy: We have information along both lines, Mr. Chairman, not only the influence but also in connection with the expenditure of union funds."

Thus both the Chairman and Mr. Kennedy made crystal clear in their very first public examination of a witness that "the deal" which was the subject of both the Marion County indictment's two counts and the Lake County grand jury investigation and hence of the alleged "conspiracy" to corrupt that investigation, intertwined and predicated *common factors*. to wit, the alleged real estate "deal" which was the subject of the indictment and was effected by the charged bribery; the alleged illicit "profits" therefrom; the alleged "bribe" to the Deputy of one-fifth out of the alleged "profits"; the alleged "conspiracy" to forestall indictment; the "restitution to the State of the $78,000 profit made on the deal"; and the ensuing indictment.

(4) The five witnesses called on June 26 were Raddock, Sawochka, Johnson, Jr., Sullivan and Blaier, all of whom were presented and interrogated as playing parts in the highway "deal" set forth in the "background statement", particularly "in the restitution of the $78,000 to the State of Indiana",—namely, the alleged "profits" of the alleged bribery (35, 47, 51-2, 67-9, 80). All five witnesses refused to answer on constitutional grounds except that Sullivan based refusal on attorney-client relationship. He denied knowing the petitioner (67).

(5) Blaier, the final witness on June 26, was accompanied by Mr. Howard Travis of the Indiana bar, who was

also defense counsel for him and the petitioner in the matter of the Indiana indictment (74).

Mr. Travis urged that interrogation of Blaier as to the subject matter of the "background statement" would involve his Indiana indictment and be an intervention by the Committee in its prosecution. Chairman McClellan thereupon announced the following ground rules to govern the interrogation (75):

> "The Chairman: All I can say is that we will go into anything within the jurisdiction of this committee, about which we think the witness may have information, and can give testimony regarding except where, even though the committee may be interested in it, the matter may be covered by our jurisdiction, and would be clearly within the purview of these hearings, if the witness is under indictment for the offense for which he was indicted, we shall not interrogate him about that.
>
> If he feels that might jeopardize his defense, we recognize that, where he is under indictment he should not be compelled to be a witness against himself on the subject matter involved in the indictment. That rule or policy will be observed.
>
> Proceed with the interrogation and we can rule upon anything that comes up."

When, notwithstanding this assurance by the Committee of the "rule or policy" to be observed by it, it continued to press Mr. Blaier as to the presupposed conspiracy to prevent indictment of himself and the petitioner in the highway matter, and the indictment itself had been marked as Committee Exhibit 47 (76, 85, 179), Mr. Travis consistently protested. For example (82):

> "Mr. Travis: No, sir. The indictment is in two counts. One is a conspiracy to commit a felony, to wit, bribery of a State official. I wish to say at this time

that it is my responsibility as attorney for this gentleman in the case under which he is under indictment, to advise him whether or not I think the questions which Mr. Kennedy is asking and is going to ask with regard to Lake County could be used in that prosecution, and my responsibility will be carried out by advising the witness to answer no questions."

And again (75):

"The matters that have been inquired about today in the hearing relate, to my mind, directly to the matters, to the transaction, for which he is indicted."

In overruling these protests the Chairman of the Committee nevertheless said (83, 84):

"The Chairman: *It may be a borderline case.* I am unable to determine it at this time. • • •

The Chairman: The Chair finds that the indictment is for alleged actions in 1956 that the crimes charged under the indictment took place.

This is something like a year later. If you want to exercise your privilege, that is all right. But I do not know how this could be related to an offense that was committed a year earlier. *It could be by indirection*, but certainly not directly, if the indictment is anywhere near accurate.

Mr. Travis: Indirection, Mr. Chairman, can be just as harmful as a direct matter." (Emphasis ours.)

Mr. Blaier thereupon followed the advice of his counsel and refused to answer. His counsel stated that Blaier did not "rely on the fifth amendment" but on "other guarantees that a man under indictment has, including the due process-of-law clause, that he must be tried only before the court where the indictment is pending" (88, 89).

(6) Mr. Travis was right in his contention that the alleged conspiracy to prevent indictment could be matter admissible at the trial of the pending indictment, both substantively, on cross-examination and in rebuttal of any defense.

Certainly the alleged restitution of the $78,000 charged to have been the illicit "profits" of "the deal" averred in the indictment could be central in the prosecution's case.

A conspiracy to prevent indictment for a criminal conspiracy or other crime predicates the latter, presupposes a prosecuteable case, links the two together in both phrasing and substance, is part of the *res gestae* and is probative of motive, intent and a guilty state of mind and purpose. Hence, under both federal and Indiana law, evidence of it and of circumstances indicative of it are available to the prosecutor on direct, in rebuttal and on cross-examination of the defendant. (*Connelly* v. *United States*, 249 F. 2d 576, 588, cert. den. 356 U. S. 921; *Keesier* v. *State*, 154 Ind. 242; 56 N. E. 232 (bribery and intimidation); *Eacock* v. *State*, 169 Ind. 488, 82 N. E. 1039 (use of money); *Perfect* v. *State*, 197 Ind. 401, 141 N. E. 52 (manufacture or suppression of evidence); *State* v. *Torphy*, 217 Ind. 383, 28 N. E. 2d 70; and *Wilson* v. *State*, 222 Ind. 63; 51 N. E. 2d 848 (flight, concealment, false name); *Conway* v. *State*, 118 Ind. 482, 21 N. E. 285 (attempted suborning of witness).)

These principles are applicable *a fortiori* where, as here, the conspiracy alleged in the Indiana indictment is charged as continuous and no termination or abandonment is alleged.

The Committee's stated opinion that because the alleged conspiracy to prevent indictment was supposed by it to have occurred after what, in the Committee's unsupported opinion, would be the completion of the offenses charged in the indictment, such alleged conspiracy would be unrelated and irrelevant to the indictment, was erroneous in law and could not bind the Indiana courts or protect the petitioner from the consequences of their contrary rulings. (See pp. 16-18, *supra*.)

(7) The public interrogation of the petitioner on the highway "deal" immediately followed on the next day (June 27).

The petitioner was accompanied by his counsel, Mr. Howard Travis of Indianapolis. He answered all questions except those which in the opinion of Mr. Travis had a bearing on "the road situation".

Mr. Travis stated that Mr. Hutcheson would not claim the Fifth Amendment's privilege against self-incrimination but would claim the rights of a man under indictment, "including the due-process-of-law clause, that he must be tried only before the court where the indictment is pending" (88, 89, 90, 94, 122-3, 126, 131-2). Mr. Travis further said (89):

> "I submit, therefore, that any inquiry by this committee into or about any of the facts related to or which might be related to such indictment and the transactions recited therein, however remote the same may be, and whether occurring before or after the transaction recited in the indictment, or as to any matter which might be attempted to be used in furtherance of the prosecution thereof, would be improper, without appropriate pertinency and outside the scope of the investigation which this committee is authorized to make."

The Chairman ruled (94):

> "As to any act covered in the indictment for the period of which the crime is alleged in the indictment, he [Mr. Hutcheson] will not be interrogated. But the matters that he will be interrogated about are subsequent to the time that the offense in the indictment was charged."

The petitioner was then asked a series of questions reflecting by dates, names, places and data the "background

information" stated by the Committee the day before as "the subject matter being inquired into" (18).

Most of the questions related to a supposed trip by the petitioner to Chicago on August 12 and 13, 1957, and to his contacts at that time with persons named or indicated in the "background statement".

Among such questions so addressed to the petitioner were questions as to whether he "did engage the services of Mr. Raddock and pay him for those services out of union funds to contact, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind." (124-5); whether he knew "Mr. Sawochka, of the Brotherhood of Teamsters" (147); whether he "had Mr. Plymate, who is a representative of the Brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957" (147); whether he "did have any business with local 142 of the Teamsters in Gary, Ind." (149); whether it was "a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957" (146); whether he (the appellant) was "out in Chicago at the same time" (144); whether that "telephone call (was) in fact paid out of union funds" (147); whether he knew Mr. James Hoffa (146); whether he had "paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years" (127).

All these questions, and those which they example, related directly to the "background information" or comprehended it in their generality (18-20). They now constitute separate counts in the instant indictment (2A-4).

In the course of this questioning, Mr. Travis said (131-2):

> "I hope you realize, Senator, it is a very delicate question for me and a very heavy responsibility. But, knowing what I do about the matter under which he is indicted, I have to exercise my judgment as best I can. • • •

"Of course, I think any man under indictmental guaranties of due process of law should not be questioned in any form concerning any matter that might remotely in any way aid the prosecution in that case.

Naturally, this committee can't sit as prosecutors or judges or jurors in that matter under which Mr. Hutcheson is indicted.

I think there are fundamental guarantees to any person under indictment that that matter shall be tried solely in the forum where the indictment lies."

(8) The advice and statements by Mr. Travis were patently in good faith and in honest discharge of a grave professional responsibility in the matter of the Indiana indictment.

The petitioner followed the advice of his counsel as to the relation of the questioning to the case against him in Indiana. As a layman he could not do otherwise. (*Chandler* v. *Fretag*, 348 U. S. 3, 10.)

(9) We submit that this consistent effort of the Committee, beginning with its "background statement", its public interrogation in development thereof, and its final nationally publicized pronouncement of guilt (151), to present publicly a preview and pre-trial of the Indiana case against the petitioner, and to pillory him with legislative denunciation in anticipation of his Indiana trial, constituted illicit interventions therein and basic violations of the petitioner's rights in due processes of law.

No court needs reminder that due process of law is primary among all the constitutional guaranties confining the Government to government by law and protecting the individual from arbitrary governmental procedures.

Nor does any court need reminder that "fairness of procedure" constitutes "due process in the primary sense" (*Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, 161;

Watkins v. *United States*, 354 U. S. 178, 206, 214; *MacKenna* v. *Ellis*, 263 F. 2d 35, 43); or that "fundamental unfairness" is a violation of due process of law (*Blackburn* v. *Alabama*, 361 U. S. 199, 206; *United States* v. *Peck*, 154 F. Supp. 603, 610, Youngdahl, J.; *United States* v. *Cross*, 170 F. Supp. 303, 306, Keech, J.); or that "the essence of due process" is "the sense of fair play,"—"our American ideal of fairness" (*Bolling* v. *Sharpe*, 347 U. S. 497, 499; *Galvan* v. *Press*, 347 U. S. 522, 530).

POINT II

When in accordance with its "background statement" the Committee attempted a public preview and virtual pre-trial of the Indiana case, the petitioner was entitled to the same due processes of law as would be his rights in the Indiana prosecution itself.

As in the case of *Delaney* v. *United States*, 199 F. 2d 107, 115 (C. A. 1), the Committee ignored the "difference between a legislative public hearing prior to indictment, and one where trial is impending under an existing indictment".

That decision is the more in point because there the indicted person was not also the witness and was never interrogated.

Where the witness is under an existing indictment, he is already in the hands of the executive and judicial departments of the nation or state as the case may be, and he is entitled to the due processes and protections of law as administered by such judicial branch, which, as said in the above *Delaney* case, is "charged with the duty of assuring the defendant a fair trial before an impartial jury," and of determining "guilt or innocence solely on the basis of evidence to be presented at the impending trial" (p. 114). The matter is then *sub judice*.

A Congressional Committee which includes in its announced subject matter of inquiry the indictment pending against the witness, the factual matters alleged in and constituting its charges, and other matters which would be relevant to or in aid of the proof thereof, is in effect undertaking to anticipate and invade executive and judicial prerogatives and duties, and the rights of the witness to their exclusive exercise thereof. Such is the very essence of due process of law.

To quote again from the *Delaney* case, *supra* (199 F. 2d 107, 110):

> "In this respect the committee hearing afforded the public a preview of the prosecution's case against Delaney without, however, the safeguards that would attend a criminal trial."

The verdict which the Committee by its news release publicly rendered in the highway matter as the petitioner was leaving the stand was in the nature of a bill of attainder,—a pronouncement of guilt by legislative action and without judicial trial (151).

POINT III

The Committee's own ground rules limiting inquiry as to matters touching the Indiana prosecution confronted the petitioner as a witness with confusions, dilemmas and avowedly borderline fields, devoid of unmistakable clarity and necessitating reliance on his Indiana counsel's advice as to the possible consequences in the Indiana prosecution.

During the interrogation of the preceding witness (Blaier), who was also a defendant in the same Indiana indictment and was also being defended by the same Mr. Travis of the Indiana bar, Senator McClellan laid down

the "rule or policy" that the Committee would not interrogate "for the offense for which he was indicted", and that if he (the witness) "feels that might jeopardize his defense", the question would not be pressed (75).

Hence, as to the questions refused, the petitioner (a layman) was confronted with dilemmas and confusions which were beyond his competence to resolve and involved ensuing basic differences of opinion between the Committee and his counsel as to what questions might have direct or indirect relation to the Indiana charges, or "might jeopardize his defense", and as to what, under the law of Indiana, the Indiana prosecutor or Indiana court might deem related or relevant evidential matter. (See p. 18, *supra*.)

This dilemma and confusion were worsened for the petitioner by the fact that, when Mr. Travis expressed his concern and opinion that the Committee was in effect violating its own "rule or policy", the Chairman stated that *"it may be a borderline case"* and could be related to the Indiana case *"by indirection"* (83, 84).

Neither the petitioner nor the Committee could make decisions for the Indiana prosecutor or court, or could bind either in any way.

Thus, the Committee, after inviting the petitioner to rely on the very limitations which it set for itself as a "rule or policy", nevertheless confronted the witness by these questions with subject matter of inquiry that was pregnant with dilemma, confusion and dispute, and was utterly beyond his competence as a layman, and beyond the competence of the Committee itself, to decide and conclude.

Thus the questions were utterly devoid of that "unmistakeable clarity" essential to a conviction where the investigating authority by resort to the criminal process administered by the federal judiciary makes operative the safeguards of criminal justice.

Hence in the extraordinary circumstances into which the petitioner was thrust by the Committee, guidance by the advice of his counsel who had the responsibility for

his defense in Indiana could not constitute a criminal contempt in law, or indeed in fact beyond a reasonable doubt. (Cf. *Watkins* v. *United States*, 354 U. S. 178; *Sacher* v. *United States*, 356 U. S. 576.)

POINT IV

The fact that some of the questions here involved coupled with their circumstances reference to the use of union funds, in no way lessened their relevancy in the prosecution and trial of the Indiana indictment and hence in no way annulled the legal bases of the petitioner's refusals to answer.

All the eighteen questions listed in the indictment had as avowed "background" and as the announced guide to their meaning and application, the "information" which the Committee embodied in its introductory description of the "subject matter being inquired into" on June 26 and 27, 1958, concerning the so-called Indiana highway matter (18-20). (See pp. 13-15, *supra*.)

That "background statement" climaxed with the Committee's assertion of "information" that "union funds were used in the course of these transactions" (20).

Since "these transactions" constituted subject matter capable of use in the prosecution and trial of the Indiana indictment, the alleged use of union funds therein did not make compulsory on the petitioner questions which otherwise would not have been compulsory as against the objections stated by his counsel. (See p. 18, *supra*.)

Turning accordingly to the questions listed in the indictment tried in this action (2A), we see that they pose the same names as the "background statement" totalizing "these transactions"; and relate to a supposed trip by the petitioner to Chicago on August 12 and 13, 1957, and his

contacts therefrom with the persons so named,—contacts which (if they occurred for the purpose described in the "background statement") would be relevant in aid of the prosecution of the Indiana indictment. (See pp. 13-15, 18, *supra*.)

Questions 1, 2, 4 and 5 have as included subject matter these same "transactions", for they expressly name Max C. Raddock who, by question 3, is identified as supposedly having been engaged to have "contacts, either directly or indirectly" with "the county prosecuting attorney, Mr. Holovachka, given name Metro, of Lake County, Gary, Ind." and to have been paid therefor "out of union funds".

This identification by question 3 of Raddock with these supposed "contacts" is implicit in the more generalized questions 1, 2, 4 and 5; and could reasonably be so understood by the petitioner and his counsel, Mr. Travis. The generalization in question 4 about "the past five years", was merely another way of again putting, under guise of a generalized inclusion, question 3.

The use in question 2 of the words "unrelated to this offense charged in the indictment now against you" was merely a reflection of the Committee's mistaken and highly confusing opinion that the alleged conspiracy to prevent indictment in Lake County was "unrelated" to the continuing conspiracy to bribe charged in the subsequent Marion County indictment, because according to the view of the Committee the latter conspiracy was earlier (82-4).

A conspiracy to prevent an indictment for a continuing criminal conspiracy predicates by its very terminology and substance the fact, substance and criminal objective of the latter.

Relevancy to the Indiana prosecution would be the consequence of the acts done and of the objectives of such acts. It would not be affected by whether such acts were paid for or not, or whether, if they were paid for, they were paid out of union funds.

Hence, we submit that whether or not the use of union funds was within the inquisitorial power of the Committee, the inclusion of such supposed use in some questions listed in the instant indictment in no way annulled the constitutional and legal rights on which the petitioner stood on the advice of his Indiana counsel.

POINT V

There was basic error in the premise and holding below that the Self-Incrimination Clause of the Fifth Amendment "is the only way he (the petitioner) could properly seek it (relief from interrogation) before a committee of Congress" (172).

By this restriction of the petitioner to this single resort, the court below effectually denied him the total rights to which as a witness then under felony indictment and awaiting trial he was entitled.

For many reasons a plea of self-incrimination, accompanied by nationwide publicizing from the Committee, would have gravely prejudiced the petitioner's right to a fair and impartial trial.

(1) In *Emspak* v. *United States*, 349 U. S. 190, the Supreme Court noted (p. 194) the acknowledgment in the Government's own brief of "the popular opprobrium which often attaches to its (the Self-Incrimination Clause's) exercise"; and itself noted its own recognition (p. 195) that "in these times a stigma may somehow result from a witness' reliance on the Self-Incrimination Clause." In *Ullmann* v. *United States*, 350 U. S. 422, 426, the Supreme Court deplored that: "Too many, even those who should be better advised, view this privilege (against self-incrimination) as a shelter for wrongdoers." See also *Slochower* v. *Board of Education*, 350 U. S. 551, 557.

(2) This very Committee had on the preceding day repeatedly shown itself ready and quick to make and publicize as opprobrious and as indicative of guilt, *even by the petitioner*, resorts to this Self-Incrimination Clause by preceding witnesses in connection with this identical "subject matter being inquired into."

Thus, when Raddock, the first witness interrogated on this subject matter, resorted to the Self-Incrimination Clause, the Chairman was quick to publicize it as proof of criminality on the part not only of Raddock *but also of this petitioner* and others (33):

> "The Chairman: In this instance, I gather the impression from this background information and from your attitude about it, there was a conspiracy between those of you who were pursuing this project to obstruct justice, to prevent indictments being found against Mr. Hutcheson, Mr. Chapman and Mr. Blaier. Is that a correct assumption?"

And again (29):

> "The Chairman: I am compelled, and I think everyone who listens or who may read this transcript is *compelled*, to the conclusion that you (Raddock) are being truthful at least about taking the fifth amendment, and that if you did tell the truth, it might tend to incriminate you, *and also those of the union who are responsible* for and who authorize the services you performed." (Emphasis ours.)

The Chairman even asserted it to be "a reflection upon the management of that union" (the Brotherhood of Carpenters of which the petitioner was the General President) (28), and as establishing "a very sad situation" (28), and as thwarting the aim of the Committee "to expose those who may have engaged in criminal acts" (21).

Certainly this petitioner, when cast in the role of the ultimate target of the announced "subject matter being inquired into," was not compelled to subject himself by a plea of self-incrimination to such unconstitutional and defamatory pillorying and prejudicing in advance of trial, or to hear himself as a consequence denounced from the high national rostrum occupied by this Committee as one who thereby and out of his own mouth "compelled" the conclusion of the guilt of himself and others.

(3) Furthermore, if the petitioner had resorted before the Committee to a plea of self-incrimination, such resort by him could be the subject of adverse inference at his Indiana trial and of adverse cross-examination if he took the witness stand in his own defense. (*Raffel* v. *United States*, 271 U. S. 494, 497, 499; *Viereck* v. *United States*, 78 App. D. C. 279, 139 F. 2d 847, 851-2, cert. den. 321 U. S. 794, a decision by this Court citing many supporting decisions.)

The Government's brief in the Court of Appeals *conceded* (p. 26, footnote 8) that "under Indiana law" a plea of self-incrimination could "be the subject of adverse inference" if the petitioner "elected to take the stand on his own behalf at a subsequent trial."

All that was held in the decisions cited below by the Government was that such a plea would not in the subsequent trial create in law a *conclusive* presumption of guilt.

POINT VI

Moreover, a plea of self-incrimination, even if the petitioner had resorted to it, would not have been lawfully available in this Federal inquiry as regards the Indiana criminality charged upon "information" in the "background statement."

Such a plea is available only as to a charge or hypothesis of crime against the laws of the sovereignty conducting the inquiry or case.

The reason is that the Self-Incrimination Clause is separate from and not included in the Due Process Clause which by reason of the Fifth and Fourteenth Amendments is all-pervading and comprehensive throughout and over all sovereignties in the Union.

The Self-Incrimination Clause "did not form part of the 'law of the land' prior to the separation of the colonies from the mother country," and hence "is not a privilege or immunity of National citizenship." (*Twining* v. *New Jersey*, 211 U. S. 78, 99 *et seq.* and headnote; *Adamson* v. *California*, 332 U. S. 46, 52; *United States* v. *Murdock*, 284 U. S. 141, 148; *Marcello* v. *United States*, 196 F. 2d 437; *Knapp* v. *Schweitzer*, 357 U. S. 371; *Mills* v. *Louisiana*, 360 U. S. 230.)

Adams v. *Maryland*, 347 U. S. 179, cited in the Government's brief below, dealt not with a plea of self-incrimination, but with 18 U. S. C. §3486 which barred the use *in all courts* of certain testimonies.

POINT VII

The practical effect of the petitioner's conviction was to impair and disallow his constitutional and common law rights to the assistance and protection of counsel in connection with the prosecution and trial of the Indiana case.

The petitioner followed the advice of his Indiana defense counsel that the subject matter being inquired into according to the Committee's definitional announcement was capable of being availed of in the prosecution and trial of the Indiana indictment.

Since the petitioner had no competence to dispute such advice, and since the Committee had no competence to bind the Indiana Court, the practical effect of the Committee's interrogation and citation for contempt was to deny to him in the preview and pre-trial of the Indiana case attempted by the Committee the protective rights which his counsel would have in the prosecution and trial of the Indiana case.

Part of the "essence of due process" is the right of an indicted person "to have the assistance of counsel for his defense",—a right so deeply imbedded in due process that it is expressly guaranteed by the Sixth Amendment and is "too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial". (*Glasser* v. *United States*, 315 U. S. 60, 69, 70, 76; *Powell* v. *Alabama*, 287 U. S. 45.

The Sixth Amendment and the common law include the right of a person under indictment jeopardizing life or liberty to the untrammeled assistance of counsel at every stage and in all matters which concern his defense. (*Chandler* v. *Fretag*, 348 U. S. 3, 10; *Snyder* v. *Massachusetts*, 291 U. S. 97, 106.)

POINT VIII

The contention that the petitioner's reliance on advice of counsel is irrelevant, disregards the fact that this particular advice ran not to relevancy to the subject matter of the inquiry, but to the relevancy of the subject matter to the pending Indiana prosecution of the petitioner.

(1) At page 20 the Government's brief below said:

> "The fact that appellant relied on the advice of his counsel in refusing to answer does not constitute a defense under 2 U. S. C. 192."

This statement disregards that *the particular advice* here involved was not advice as to the pertinency of the questions to the subject of inquiry, but rather was advice as to their pertinency in and to the Indiana prosecution, and that such advice was given by the petitioner's Indiana counsel charged with responsibility for his defense.

(2) As to such pertinency there can be no dispute. (See pp. 13-15, 18, *supra.*)

Take, for example, the matter described in the "background statement" of the Committee by the words (18, 19):

> "The Carpenters' officials made restitution to the State of the $78,000 profit made *on the deal.*"

This alleged "restitution" was of the amount central to both counts in the indictment,—the amount charged therein to have been the illicit objective and gain and to have measured on a one-fifth scale the total sum charged in the first count to have been paid in bribery.

(3) The matter of the pertinency of the questions in relation to the Indiana indictment and its prosecution was

a subject as to which the petitioner, as a layman, could have no knowledge.

Such pertinency ran to matters of law which were solely within the competence of lawyers and judges; which were for the Indiana court whose exclusive judicial prerogative and jurisdiction had already attached; which the petitioner, as a layman, had no conceivable means of determining; and which the Committee itself had no power or competence to conclude or forestall by any opinion it might entertain or express.

Indeed, even the Committee recognized the probability of *that* pertinency, for its Chairman acknowledged that "it may be a borderline case" and relate "by indirection" (83, 84).

The witness (the petitioner) cannot be penalized criminally because of an ambiguity and dilemma which the Committee itself acknowledged and created and which he was in no position to resolve. (*Quinn* v. *United States*, 349 U. S. 155, 166.)

(4) Hence, in taking the advice of his counsel as to such relations, the petitioner was fully justified. Indeed he could do nothing else.

In no sense can he be deemed to have had the wilful or criminal intent necessary to conviction in this case, or to have been "capricious and arbitrary", or to have been guilty of "wilful, unjustified obstruction of a legitimate legislative function". (*Quinn* v. *United States*, 349 U. S. 155, 165; *Emspak* v. *United States*, 349 U. S. 190, 202; *Watkins* v. *United States*, 354 U. S. 178; *Sacher* v. *United States*, 356 U. S. 576; *United States* v. *Kleinman*, 107 F. Supp. 407, 408.)

The distinctions between the present case and *Sinclair* v. *United States*, 279 U. S. 263, cited by the Government below, are (1) in *Sinclair* no indictment and its constitutional consequences were involved; and (2) in *Sinclair* the witness' refusal was on the ground of irrelevance under the statute delimiting the Committee's authority.

POINT IX

As to the petitioner, a witness then under indictment, the Committee neither had nor could have power "to search out and find if crime had been committed"; or to act "to assist and help law enforcement officials in the State of Indiana"; or to pressure them to "further exposure" of the petitioner; or to invade subject matters which were exclusively for the executive or judicial branch of government in Indiana or elsewhere; or to pillory and smear the petitioner in advance of trial with nationally publicized accusations and pronouncements of criminality.

For these reasons also the Committee was invading the rights of the petitioner to due processes of law.

(1) The petitioner did not lose his rights to due processes of law under the Fifth and Sixth Amendments and the common law upon being called before the Committee to give public testimony. (*Watkins* v. *United States*, 354 U. S. 178, 188; *Barenblatt* v. *United States*, 360 U. S. 109, 112; *Wolf* v. *Colorado*, 338 U. S. 25, 27.)

When an indictment has been filed with the court, the subject matter comes under the jurisdiction of the judicial branch of the government and becomes the exclusive concern of that branch and of the executive branch. The accused therefore becomes vested with all those constitutional rights which in consequence are within the wide embrace of due processes of law under constitutional guarantees and the common law.

Watkins v. *United States*, 354 U. S. 178, 187;
Barenblatt v. *United States*, 360 U. S. 109, 111-2;
Greene v. *McElroy*, 360 U. S. 474, 507;
Delaney v. *United States*, 199 F. 2d 107, 110, 114-5;
Baker v. *Hudspeth*, 129 F. 2d 779, 781, cert. den. 317 U. S. 681.

(2) This record shows, we submit, that the Committee and its counsel so prepared and worded its initial and dramatic public announcement of "the subject matter being inquired into" (18-20) as to include the Indiana indictment and its contents, "the deal," the illicit "profits" therefrom and the corrupt use thereof which that indictment charged; the alleged criminal "conspiracy" to prevent indictment for "the deal"; implementation of "the conspiracy" by the "restitution of the $78,000 profit made on the deal" charged in the indictment; and alleged participations by the petitioner in all such criminal acts.

This record further shows, we submit, that the Committee and its counsel thereafter conducted the interrogation of the petitioner in sensational and highly publicized exploitation of this announcement "as to the subject matter being inquired into," and in such wise as grossly to prejudice, pre-try and publicly pillory the petitioner and infer his guilt in advance of his trial; and that the Committee concluded its interrogation by publicly and effectually accusing him of committing crime against Indiana as therein alleged, by offering to assist Indiana law enforcement officials in prosecuting him therefor, and by pressuring them with admonition that "further exposure should be made" (151).

This record also shows that at the trial the Chairman of the Committee reaffirmed these purposes and objectives and defended them by testifying that "our legislative purpose is to search out and find if crime has been committed," and that, in furtherance, "if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them" (163).

We protest these assertions of power and purpose, and the manner and methods by which they were exercised and exploited, as beyond the Committee's authorization and constitutional and statutory power; as illicit invasions and derogations of rights and duties reserved to the execu-

tive and judicial branches of government and to the sovereign State of Indiana; as publicly pillorying, smearing and pre-trying the petitioner in advance of his Indiana trial; as denying him due process of law and his constitutional rights to a fair, impartial and unprejudiced trial and to the protection of counsel; and, as a consequence, rationalizing and justifying the course taken by the petitioner and his counsel throughout the interrogation, and demonstrating the absence of the required criminal intent or of its proof beyond a reasonable doubt.

The Committee, we submit, departed from the legitimate scope of legislative inquiry to intervene in a specific prosecution of a single individual in a manner affecting adversely, and intended to affect adversely, his capability to defend himself.

Conclusion

This case presents important basic questions of law not heretofore determined by this Court. We urge that the petition be granted.

Respectfully submitted,

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APPENDIX

Text of the Fifth and Sixth Amendments

ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor sha'l any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE [VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.